

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
UTICA MUTUAL INSURANCE COMPANY,

Civ. No.

Plaintiff,

COMPLAINT

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Defendant.

-----X

Plaintiff, Utica Mutual Insurance Company ("Utica"), by its attorneys, Mound, Cotton, Wollan & Greengrass, for its Complaint, upon information and belief alleges:

JURISDICTION and VENUE

1. This is an action for breach of contract, and for declaratory judgment brought pursuant to 28 U.S.C. § 2201, for the purpose of determining an actual controversy between the parties as further described herein.

2. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 inasmuch as the matter in controversy exceeds \$75,000, exclusive of interest, attorneys' fees, and costs, and plaintiff and defendant are citizens of different States.

3. Venue is properly placed under 28 U.S.C. § 1391, as this is a diversity action, Utica resides in this district, and defendant corporation is registered to do business in this district and is doing business in this district, and a substantial part of the events, giving rise to this Complaint occurred in this district.

THE PARTIES

4. At all times hereinafter mentioned, Utica was and still is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business at 180 Genesee Street, New Hartford, New York where it is engaged in the business of an insurance company.

5. Upon information and belief, defendant, Fireman's Fund Insurance Company ("FFIC"), was and still is a California corporation with its principal place of business at 777 San Marin Drive, Novato, California where it is engaged in the business of an insurance and reinsurance company.

FACTUAL BACKGROUND

6. Utica provided umbrella liability insurance coverage (amongst other coverage) to Goulds Pumps, Incorporated ("Goulds"), a New York corporation pursuant to various policies of insurance including coverage commencing in 1966 and continuing through 1972 (the "underlying policies").

7. The underlying policies were issued by Utica and delivered to Goulds in New York.

8. Utica provided primary insurance coverage to Goulds pursuant to various policies of insurance including coverage commencing in 1966 and continuing through 1972 in the amount of \$100,000/\$300,000 (with a \$300,000 products aggregate), and umbrella coverage in the amount of \$10,000,000 (Ultimate Net Loss contract).

9. Utica sought and obtained reinsurance of the underlying policies through an intermediary, Herbert Clough, Inc. ("Clough"), located at the time at 485 Madison Avenue, New York, New York. The reinsurance contracts were issued and delivered to Utica Mutual in the

state of New York to reinsure the policies Utica Mutual issued to a New York Corporation, Goulds Pumps, Inc.

10. Utica retained 5% of the first \$1,000,000 of the umbrella coverage. Utica Mutual directly placed 95% of the first \$1,000,000 plus 100% of \$4,000,000 xs \$1,000,000 with General Reinsurance Corp., Clough placed the next \$5,000,000 portion of the reinsurance with FFIC.

11. FFIC issued six certificates of reinsurance to Utica delivered through Clough for \$5,000,000 excess of \$5,000,000 ("excess layer") from May 31, 1966 to July 1, 1967, July 1, 1967 to July 1, 1968, July 1, 1968 to July 1, 1969, July 1, 1969 to July 1, 1970, July 1, 1970 to July 1, 1971 and July 1, 1971 to July 1, 1972 respectively (the "Certificates").

12. Goulds filed numerous asbestos related claims, including those involving losses for the above stated period with Utica and Utica adjusted and paid claims and incurred expenses in good faith under the underlying policies that fall within the terms of the certificates ("underlying claims").

13. The underlying claims and the expenses related thereto were adjusted and paid by Utica at their Home Office in New Hartford, N.Y. on behalf of Goulds. The majority of the claims against Goulds and handled by Utica were filed against Goulds in the State of New York.

14. A portion of the total of all Goulds' asbestos claims and associated expenses fall within the excess layer reinsured by FFIC.

15. On or about September 12, 2008 Utica first billed FFIC \$16,794,738.15 for underlying claims and associated expenses that fall within the excess layer.

16. Subsequent billings were issued by Utica to FFIC and, as of May 31, 2009 the billings total \$25,259,405.81 and are continuing.

17. Utica has provided all information requested by FFIC with respect to the underlying claims and the billings, and has made its files located in New Hartford, New York available during an audit conducted there by FFIC during April, 2009.

18. Utica has complied with all of the terms and conditions of the certificates.

19. To date, in breach of its obligations under the certificates, although requested, FFIC has failed to make payment of any portion of the billings.

COUNT I

20. Utica repeats and realleges the allegation contained in paragraph 1 through 17.

21. Pursuant to the Certificates, FFIC is obligated to make payments to Utica in the sum of \$25,259,405.81 as of May 31, 2009 but has failed to make such payment.

22. FFIC breached the certificates by failing to make payment of the billings through May 31, 2009.

23. By reason of FFIC's breach, as of May 31, 2009, Utica has sustained damages in the sum of \$25,259,405.81, and such damages are continuing.

24. By reason of the foregoing, Utica demands judgment against FFIC in the sum of \$25,259,405.81.

COUNT II

25. Utica repeats and realleges the allegations contained in paragraphs 1 through 22.

26. Utica will continue to incur expenses by reason of the underlying claims and associated expenses that are subject to reimbursement by FFIC pursuant to the Certificates.

27. By reason of the foregoing, Utica is entitled to a judgment declaring that FFIC is obligated to make payment to Utica for billings subsequent to May 31, 2009 with respect to

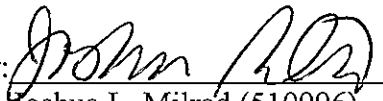
additional claims and associated expenses paid by Utica under the underlying policies that are subject to reimbursement under the certificates.

WHEREFORE, Plaintiff Utica requests that the Court enter judgment as follows:

1. In favor of Plaintiff Utica against Defendant FFIC in the sum of \$25,259,405.81 for amounts billed through May 31, 2009;
2. Declaring that FFIC is obligated to pay future billings by Utica for claims and associated expenses subject to reimbursement under the certificates; and
3. Awarding interest, costs and such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 29, 2009

MOUND COTTON WOLLAN
& GREENGRASS

By: 
Joshua L. Milrad (510996)
Attorneys for Plaintiff
UTICA MUTUAL INSURANCE
COMPANY
One Battery Park Plaza
New York, New York 10004
(212) 804-4200

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS UTICA MUTUAL INSURANCE COMPANY (b) County of Residence of First Listed Plaintiff <u>Oneida County, NY</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Mound Cotton Wollan & Greengrass, One Battery Park Plaza, New York, New York 10004 (212) 804-4200	DEFENDANTS FIREMAN'S FUND INSURANCE COMPANY County of Residence of First Listed Defendant <u>Marin County</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width: 10%;">DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 4</td> <td style="width: 10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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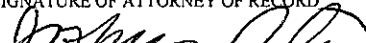
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V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC 2201 AND 28 USC 1332</u>
	Brief description of cause: <u>Breach of Reinsurance Contract</u>

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>25,259,405.81</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE 07/29/2009 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____